

Town of Amherst
Zoning Board of Appeals
SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2014-00010, to erect a six foot fence adjacent to East Hadley Road and an eight foot fence along the east property line, under Section 6.29 of the Zoning Bylaw at 9 Chesterfield Drive (Map 16D, Parcel 142, R-N Zoning District), with conditions.

1. The fence shall be arranged and located substantially in accordance with the Site Plan survey prepared by Harold Eaton Associates, dated October 18, 2013 and last revised on November 21, 2013
 - a. The fence shall not exceed six feet in height along that portion adjacent to East Hadley Road.
 - b. A 48 foot section of fence, as shown and located on the approved site plan along the east property line, may be constructed at a height of eight feet.
2. The fence material shall be white cedar and the design shall be substantially in accordance with the approved specifications showing the "the Jean" as provided by Fitchgerald Fence Company.
3. The "finished" side of the fence shall face the street and/or adjacent property.
4. Upon completion of the fence installation, an as built survey shall be submitted to the Inspection Services office.
5. The fence shall be maintained and kept in good repair so long as it is in place.
6. Any substantial changes to the fence location, design, or other aspects of this approval shall be submitted to the Board for review at a public meeting. The purpose of the public meeting shall be for the Board to determine if said changes are significant enough to require modification of the permit as set forth in the ZBA Rules and Regulations.

Mark Parent (13)
Mark Parent, Acting Chair
Amherst Zoning Board of Appeals

3/7/14
DATE

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant/Owner: Juliana Dupre, 9 Chesterfield Drive, Amherst, MA 01002

Date application filed with the Town Clerk: November 26, 2013

Nature of request: For a Special Permit to erect a fence taller than four feet within multiple front yard setbacks, under Section 6.29 of the Zoning Bylaw

Address: 9 Chesterfield Drive (Map 16D, Parcel 142, R-N Zoning District)

Legal notice: Published on January 8, 2014 and January 15, 2014 in the Daily Hampshire Gazette and sent to abutters on January 3, 2014

Board members: Mark Parent, Yuri Friman, Pari Riahi

Staff members: Jeff Bagg, Senior Planner, Robert Morra, Building Commissioner

Submissions:

- Project Application Report, dated January 17, 2014
- Application form filed with the Town Clerk on November 26, 2013
- Letter
- Notes pertaining to request
- Google map
- Letter with photographs
- Bus schedule
- List of neighbors contacted and sample letter
- Email dated September 20, 2013
- Fitzgerald Fence Inc, quote and map
- Photograph of proposed fence type
- Fence construction detail
- Existing conditions photograph
- Proposed Site Plan survey prepared by Harold Eaton Associates, dated October 18, 2013 and last revised on November 21, 2013
- Town GIS map showing clear site triangle

Site Visit: January 21, 2014

Mark Parent, Yuri Friman, and Pari Riahi met the applicant, Julianna Dupre, on-site. They observed the location of the property along the north side of East Hadley Road and at the east side of Chesterfield Drive, and the following:

- The location of surveyors stakes demarking the property boundary adjacent to East Hadley Road and the corner of Chesterfield Drive and East Hadley Road. The location of the existing fence adjacent to and along the property line and east property line
- The existing fence in relatively poor condition and missing several sections.
- The location of the property in close proximity to the entrance to two apartment complexes, The Boulders and Southpoint, and several buses entering or exiting.

Public Hearing: January 23, 2014

The applicant, Julianna Dupre, along with her husband, were present. Ms. Dupre presented the application, summarized as follows:

- After purchasing the property, they installed the six foot fence to reduce the impact from buses and other vehicle and pedestrian traffic entering and existing the apartment complexes. Along with the fence, many shrubs and other vegetation has been planted in the area, but it isn't sufficient to block all the nuisances.
- There has consistently been issues related to the noise from the buses, the lights casting into their property and other impacts related to people congregating at the bus stop which is close to their property.
- Additionally, there has been an increase in the commercial vehicle traffic to and from the apartments, such as trash hauling trucks entering the property beginning at 5:45 a.m.
- The existing six foot fence is falling into disrepair and once they began to consider replacing it, they decided to propose a taller fence. The eight foot fence is proposed to provide added safety to protect their family from the noise and light issues, but also to provide added privacy. Specifically, the taller fence would prevent people who are standing in the buses as they approach the apartments from being able to see into their back yard area.

The Board discussed that nature of the fence with respect to the neighborhood. Ms. Riahi stated that she didn't observe any other fences in the vicinity and noted that an eight foot fence is very tall and imposing. She expressed concern about it changing the appearance of the property dramatically when compared to other properties. Ms. Dupre noted that the proposed fence is only two feet taller than the existing fence and that the additional height is necessary to provide privacy and to protect their family from being observed by people passing by on the buses, as shown on one of the submitted photographs.

The Board discussed the zoning requirements for fences in a front yard. Mr. Parent explained that Section 6.24 of the Zoning Bylaw limits the height of fences within a front yard setback to no more than four feet and that this property contains two front yards; one adjacent to East Hadley Road and the other adjacent to Chesterfield Drive. Mr. Parent noted that he believed the eight foot fence was too tall and noted that the only thing a six foot fence does not do is protect the view into the property from people riding on the bus. Ms. Dupre stated that it isn't just people on the bus, but also those traveling in larger vehicles who can see over the six foot fence into their property. Mr. Friman stated that he could consider the eight foot fence along East Hadley Road, citing that the applicant's property is a single family dwelling which is distinguishable from the apartment uses across the street. Ms. Riahi stated that while understanding the applicant's concern, she believed the eight foot fence to be excessive and that it would have a serious effect on the neighborhood in terms of visual appearance and presence.

The Board discussed the portion of fence proposed for the east property line. The Board determined that an eight foot fence in that location would be acceptable citing its location along a side yard and not facing or immediately adjacent to East Hadley Road.

The Board determined that an eight foot fence adjacent to East Hadley Road and Chesterfield Road would not be acceptable. The Board discussed with the applicant allowing a six foot fence, located as shown on the survey, and allowing an eight foot fence along the east property line. The applicant expressed extreme disappointment with the Board's decision and stated that the six foot fence along East Hadley Road would not provide the protection they were seeking.

No members of the public spoke regarding this application.

Ms. Riahi MOVED to close the evidentiary portion of the public hearing. Mr. Friman seconded the motion and the Board VOTED unanimously to close the public hearing.

Public Meeting/Findings:

The Board found under Section 6.29 of the Zoning Bylaw, that:

6.29 - Under the provisions of Section 10.38 or 11.24, as applicable, fence, wall, and planting requirements as found in Sections 6.23 through 6.28 may for compelling reasons of safety, aesthetics, or site design be modified by the Permit Granting Board or Special Permit Granting Authority with jurisdiction over the proposed or existing Principal or accessory use(s) for which the fence serves as an accessory structure. The Board found that an eight foot fence along East Hadley Road, as requested, was not acceptable. The Board determined that the two additional feet above a six foot fence would have a potential negative impact on the neighborhood and appearance of the property that outweighed what it would provide in terms of privacy and protection. The Board found that there compelling reasons of safety and site design to permit a six foot fence to be reinstalled along East Hadley Road. The Board found that the location of the property in close proximity to the large complexes necessitates the six foot fence and that with the exception of people standing on a bus or taller commercial vehicles, offered sufficient visual screening and protection of the property. The Board also citing the concern of other abutting property owners seeking the same request of an eight foot fence facing East Hadley Road as a reason to allow only a six foot fence. The Board found that an eight foot fence along the east property line was acceptable in that it did not face the street. The Board found that based on the photographs, this area is more open and would provide more protection while resulting in less of a visual impact to the neighborhood.

6.27- On corner lots, no fence, wall or landscape/plantings shall be located within the clear sight triangle so as to obstruct visibility at the intersection in a manner that will jeopardize the safety of vehicles and pedestrians. The clear sight triangle is that area formed by the intersecting street lines and a straight line joining said street lines at a point twenty-five (25) feet distant from the point of intersection of street lines. The Board found that based on the measurements shown on the Town GIS maps that the six foot fence at the corner of East Hadley Road and Chesterfield Drive would not fall within the clear site triangle.

The Board waived the requirement for a landscaping plan based their decision to lower the fence from the request eight feet to six feet adjacent to East Hadley Road.

Specific Findings:

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 & 10.381 - The proposal is suitably located in the neighborhood in which it is proposed and/or the total Town, as deemed appropriate by the Special Permit Granting Authority; The proposal is compatible with existing Uses and other Uses permitted by right in the same District.

The Board found that allowing a six foot fence adjacent to East Hadley Road and an eight foot fence along the east property line was justified based on the compelling reasons of safety and site design cited herein. A six foot fence was compatible and suitable in the neighborhood, especially provided the properties location across the street from several large apartment complexes. The materials for the fence are superior to a traditional picket fence and conditions of the permit require that the fence be continuously maintained in good repair -- all of which provide compatibility of the fence with the neighborhood.

10.382, 10.383 & 10.385 - The proposal would not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights, or visually offensive structures or site features; The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians; The proposal reasonably protects the adjoining premises against detrimental or offensive uses on the site, including air and water pollution, flood, noise, odor, dust, vibration, lights or visually offensive structures or site features. The Board found that the reduction in the height of the fence from eight feet to six feet will provide a fence that will not be visually offensive. Additionally, the six foot fence will reasonably protect the adjoining neighborhood whereas an eight foot fence would have negatively changed the character of the neighborhood.

10.387 - The proposal provides convenient and safe vehicular and pedestrian movement within the site, and in relation to adjacent streets, property or improvements... The Board found that the fence will not be located within the clear site triangle will therefore allow for convenient and safe vehicular movement when entering or exiting Chesterfield Drive.

10.395 - The proposal does not create disharmony with respect to the terrain and to the use, scale and architecture of existing buildings in the vicinity which have functional or visual relationship thereto... The Board found that there are no other fences in the vicinity and that an eight foot fence would have created a disharmony and visual impact to the neighborhood. The reduced height fence at six feet provides for greater compatibility with the neighborhood while providing the applicant with a reasonable amount of protection and privacy.

10.398 - The proposal is in harmony with the general purpose and intent of this Bylaw, and the goals of the Master Plan. The Board found that the six foot fence adjacent to East Hadley Road and the eight foot fence along the east property line is harmony with the purposes of the Bylaw and provides for a fence for the health and safety of the applicant while mitigating the potential impact of a taller fence on the neighborhood.

Zoning Board Decision

Ms. Riahi MOVED to approve the application with conditions. Mr. Friman seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, ZBA FY2014-00010, to erect a six foot fence adjacent to East Hadley Road and an eight foot fence along the east property line, under Section 6.29 of the Zoning Bylaw at 9 Chesterfield Drive (Map 16D, Parcel 142, R-N Zoning District), with conditions.

Mark Parent JB
MARK PARENT

Xu 
YURI FRIMAN

Pari Riahi JB
PARI RIAHI

FILED THIS 7th day of March 2014 at 2:40 pm
in the office of the Amherst Town Clerk Andrea J. Blum
TWENTY-DAY APPEAL period expires, MARCH 27 2014.
NOTICE OF DECISION mailed this 10 day of March, 2014
to the attached list of addresses by Jeffrey R. B..., for the Board.
COPY OF NO APPEAL issued this day of , 2014.
NOTICE OF PERMIT or Variance filed this day of , 2014,
in the Hampshire County Registry of Deeds.

**BOARD OF APPEALS
AMHERST, MASSACHUSETTS
RECORD OF APPEALS AND DECISION RENDERED**

Petition of Juliana Dupre

For A Special Permit to erect a fence taller than four feet within multiple front yard setbacks, under Section 6.29 of the Zoning Bylaw

On the premises of 9 Chesterfield Drive

At or on Map 16D, Parcel 142, R-N Zoning District

NOTICE of hearing as follows mailed (date) January 3, 2014
to attached list of addresses and published in the Daily Hampshire Gazette
dated January 8, 2014 and January 15, 2014

Hearing date and place January 23, 2014 (Town Hall)

<p style="text-align:center">LEGAL NOTICE</p> <p>The Amherst Zoning Board of Appeals will meet on *Thursday, January 23, 2014*, at 6:30 P.M. in the Town Room, Town Hall, to conduct the following business:</p> <p>PUBLIC HEARING:</p> <p>ZBA FY2014-00010 - Juliana Dupre - For a Special Permit to erect a fence taller than four feet within multiple front yard setbacks, under Section 6.29 of the Zoning Bylaw, at 9 Chesterfield Drive (Map 16D, Parcel 142, R-N Zoning District)</p> <p>ZBA FY2014-00015 -- Michael Ben-Chaim -- For a Special Permit to modify conditions of ZBA FY2012-00021, to allow changes to the approved building plans and landscaping plan, at 28 Shays Street (Map 20A, Parcel 15, R-N Zoning District)</p> <p>ERIC BEAL, CHAIR AMHERST ZONING BOARD OF APPEALS 3282593 January 8, 15</p>

SITTING BOARD and VOTE TAKEN:

To grant a Special Permit, ZBA FY2014-00010, to erect a six foot fence adjacent to East Hadley Road and an eight foot fence along the east property line, under Section 6.29 of the Zoning Bylaw at 9 Chesterfield Drive (Map 16D, Parcel 142, R-N Zoning District), with conditions, with conditions

Mark Parent – Yes Yuri Friman – Yes Pari Riahi - Yes

DECISION: APPROVED with conditions as stated in permit

THE COMMONWEALTH OF MASSACHUSETTS
AMHERST

City or Town
NOTICE OF SPECIAL PERMIT
Special Permit
(General Laws Chapter 40A)

Notice is hereby given that a Special Permit has been granted

To Juliana Dupre
Address 9 Chesterfield Drive
City or Town Amherst, MA 01002

Identify Land Affected: 9 Chesterfield Drive
(Map 16D, Parcel 142, R-N Zoning Districts)

By the **Town of Amherst Zoning Board of Appeals** affecting the rights of the owner
with respect to the use of the premises on

9 Chesterfield Drive Amherst
Street City or Town

The record of title standing in the name of
Juliana Dupre McGovern
Name of Owner

Whose address is 9 Chesterfield Drive Amherst MA 01002
Street City or Town State Zip Code

By a deed duly recorded in the

Hampshire County Registry of Deeds: Book 5151 Page 231
or

Hampshire Registry District of the Land Court, Certificate No. _____,
Book _____, Page _____

The decision of said Board is on file, with the papers, in ZBA FY2014-00010
In the office of the Town Clerk Sandra J. Burgess

Certified this _____ day of _____

Board of Appeals:

Mark Parent (JB) Chairman
(Board of Appeals)
Xuli Frim (JB) Clerk
(Board of Appeals)

_____ at _____ o'clock and _____ minutes _____ m.
Received and entered with the Register of Deeds in the County of Hampshire
Book _____ Page _____

ATTEST _____
Register of Deeds
Notice to be recorded by Land Owner

Town of Amherst Abutter List

Parcel ID	Parcel Address	Owner1	Owner2	Address	City/St/Zip
16D-101	6 CHESTERFIELD DR	TENG, XIAOPING & SHEN, TONG		6 CHESTERFIELD DR	AMHERST, MA 01002
16D-142	9 CHESTERFIELD DR	DUPRE, JULIANA MCGOVERN		P.O. BOX 3407	AMHERST, MA 01002
16D-143	17 CHESTERFIELD DR	ORELLANA, RIENZI G		17 CHESTERFIELD DR	AMHERST, MA 01002
16D-102	26 CHESTERFIELD DR	PRICE, JANET K		26 CHESTERFIELD DR	AMHERST, MA 01002
16D-144	27 CHESTERFIELD DR	CHANG, TSO-CHENG & ROSE CO-TRUSTEES	CHANG FAMILY TRUST	62 MAIN ST	AMHERST, MA 01002
16D-103	36 CHESTERFIELD DR	GALANTE, PETER A & CYNTHIA T		36 CHESTERFIELD DR	AMHERST, MA 01002
16D-15	EAST HADLEY RD	ERCOLINI, ROBERT TRUSTEE	NEW HOLLISTER NOMINEE TRUST	1040 NORTH PLEASANT ST	AMHERST, MA 01002
16D-139	177 EAST HADLEY RD	THACH, SUSAN & NOP, SEREY		177 EAST HADLEY RD	AMHERST, MA 01002
16D-140	187 EAST HADLEY RD	NGODUP, LOBSANG & TSERING, L		187 EAST HADLEY RD	AMHERST, MA 01002
16D-11	188 EAST HADLEY RD	NORTHLAND BOULDERS LLC	C/O NORTHLAND INVESTMENT CORP	2150 WASHINGTON ST	NEWTON, MA 02462
16D-141	197 EAST HADLEY RD	BRAUN, ELIZABETH A & DAUT, CHRISTOPHER		2466 POMINO WAY	PLEASANTON, CT 04566
16D-201	235 EAST HADLEY RD	BOYNTON, FLORENCE M	C/O BOYNTON, FLORENCE M LIFE ESTATE	235 EAST HADLEY RD	AMHERST, MA 01002
16D-205	37 HUNTERS HILL CIR	SHI, DABO & YU, KEREN		37 ORCHARD ST	BELCHERTOWN, MA 01007
16D-206	41 HUNTERS HILL CIR	BECKER, CARLA TRUSTEE OF WINDCATCHER REV	C/O KONOWITZ, SUJATA REGE & JEFFREY S	41 HUNTERS HILL CIR	AMHERST, MA 01002

<i>Parcel ID</i>	<i>Parcel Address</i>	<i>Owner1</i>	<i>Owner2</i>	<i>Address</i>	<i>CityStZip</i>
16D-147	70 JUSTICE DR	ST JOHN, DANIEL J & REGINA P		70 JUSTICE DR	AMHERST, MA 01002
16D-146	80 JUSTICE DR	JOHNSON, MARJORIE R		80 JUSTICE DR	AMHERST, MA 01002
16D-145	90 JUSTICE DR	WANG, ZHIJUN		90 JUSTICE DR	AMHERST, MA 01002